the other hand the newspaper had been published in Kansas, though advertising cigarettes to be sold in interstate commerce, or if the question had related to local sales of the newspapers not in original packages, it is possible that the state police power might have justified the prohibition. *Cf. Delameter v. South Dakota* (1907) 205 U. S. 93, 27 Sup. Ct. 447; *State v. J. P. Bass Pub. Co.* (1908) 104 Me. 288, 71 Atl. 894; *State v. Delaye* (1915) 193 Ala. 500, 68 So. 993; *State v. Davis* (1915, W. Va.) 87 S. E. 262. In the *Delameter* case, on the authority of which the other three cases were decided, the Wilson Act was expressly relied on, and the case is distinguished in the principal case as depending on the effect of that Act. No doubt the change in national policy evidenced by the Wilson Act materially influenced the decision in the *Delameter* case, but it is difficult to see how the reasoning in the last part of the opinion, on which the case finally turned, gained any direct assistance from the Act. In the principal case, however, since both the distribution of the newspapers to subscribers and the sales of cigarettes which the advertisements tended to promote were interstate commerce, there was nothing done or contemplated within the state on which its police power could be exercised without a direct interference with interstate commerce. This would seem to be the true ground for distinguishing the *Delameter* case.

CONTRACTS—INSTALLMENT CONTRACTS—NON-PAYMENT OF PRICE OF FIRST INSTALLMENT AS ENTIRE BREACH.—The plaintiff agreed to sell and deliver to the defendant certain picture films. One film was to be delivered each month and payment therefor was to be within thirty days. The defendant failed to make the first payment on the day, and two days later the plaintiff sued for damages, alleging the defendant's breach and his own election to terminate the contract. The trial court found that there was a refusal to pay, unaccompanied by any repudiation, but there was no finding as to any of the other surrounding circumstances from which the materiality of the breach could be determined. *Held*, that there was no showing of such a breach as justified the plaintiff in renouncing the contract, and that the plaintiff was entitled to judgment for the sum due and unpaid but not for damages as for an entire breach. *Helgar Corp. v. Warner's Features, Inc.* (1918, N. Y.) 58 N. Y. L. J. 1780.

The case was governed by section 45 of the Uniform Sales Act as adopted in New York, which provides that "it depends in each case on the terms of the contract and the circumstances of the case whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract." This makes the question one of *fact* to be determined, as it should be, in each case separately on its merits. The courts have generally, however, attempted to lay down a rule apparently capable of mechanical application. Thus the English courts have said that mere non-payment of the price is not vital unless accompanied by repudiation. *Freeth v. Burr* (1874) L. R. 9 C. P. 208; *Mersey Steel and Iron Co. v. Naylor* (1884, H. of L.) 9 App. Cas. 434. The soundness of this rule was seriously doubted by Sir Frederick Pollock. Wald's Pollock, *Contracts* (Williston's ed.) 330. In the United States the courts have generally declared non-payment in such cases to be always vital, without reference to the circumstances accompanying it, contenting themselves with some such general proposition as "In the contracts of merchants, time is of essence." See Williston, *Sales*, sec. 467. In the present case the court very sensibly disregards such a "general statement," and refuses to lay down a mechanical rule making failure to pay on time always equivalent to an entire breach. Upon delivery of the films and the arrival of the day of payment the buyer became the plaintiff's *debtor* for the agreed price then payable. Upon non-payment, the plaintiff has a right to damages caused by the

non-payment. But in the absence of a showing as to the seriousness of the damage suffered by him, or as to the probability of further breaches by the defendant, the plaintiff is not privileged to refuse further deliveries, and has no right to damages based on the assumption of further non-performance by the defendant. The rule should be the same even where the Sales Act has not been adopted.

CRIMINAL LAW—INSANITY—EFFECT OF INSANITY AT TIME OF TRIAL.—The defendant, who was not represented by counsel, was convicted of an assault with intent to rape. Later a lawyer was secured, who moved for a new trial, alleging that the defendant was insane at the time of trial. The trial court offered to submit the question of present insanity to a jury, under a code section relating to insanity supervening after conviction, but declined to hear evidence to show that the defendant was insane when tried as a ground for granting a new trial on the original indictment. *Held,* that the trial court should have heard and considered the evidence, and if it appeared that the defendant was insane when tried, should have granted a new trial. *Gardner v. State* (1917, Tex.) 198 S. W. 312.

As suggested by the court, reversal of the first trial was warranted by an objection more fundamental than that of newly discovered evidence, namely, that the insanity of the appellant avoided the former proceedings. Nor, it would seem, does the objection really depend on the fact that he could not be held to know of his insanity so as to plead it as a defense. It is elementary that a man cannot legally be tried, or convicted, or sentenced, while in a state of insanity. 1 Bishop, *Criminal Law,* sec. 396; 1 Wharton, *Criminal Law,* sec. 58 *et seq.* Where the question of present insanity is raised before trial, the usual procedure is to present the question to the trial jury. *Frith's Case* (1790) 22 How. St. Tr. 307. But other procedure may be adopted in the discretion of the court. See *Freeman v. People* (1847, N. Y. Sup. Ct.) 4 Den. 9. It is for the court to determine whether there is sufficient evidence to warrant submission of the question to the jury. *Spann v. State* (1872) 47 Ga. 549. And the determination of this question is not reviewable on appeal. *Webber v. Commonwealth* (1888) 119 Pa. 223. The question of present insanity may be raised at any stage of the trial, and the court must receive any evidence offered but may dispose of the issue as it sees fit. *State v. Reed* (1889) 41 La. Ann. 581. The approved course seems to be to submit the special issue with the general issue to the jury. The instant case is novel in that it appears to be the first in which the question of insanity at the time of trial was not raised until later. But there are cases holding that where it appears after trial that the defendant was deaf and dumb, or intoxicated, and therefore incapable of understanding the proceedings, the trial will be set aside. *Regina v. Berry* (1876, Cr. Cas. Res.) 1 Q. B. D. 447; *Taffe v. State* (1861) 23 Ark. 34.

DAMAGES—BREACH OF CONTRACT—DAMAGES RESULTING FROM DEATH OF WIFE.—In consideration of one dollar deducted monthly from the plaintiff's wages, the defendant company agreed to provide him and his family with medical attention. The plaintiff's wife having become ill, the plaintiff sent for the company's doctor. He refused to attend her. The plaintiff brought an action for breach of contract, and, alleging that he could not afford to engage another doctor, claimed damages for the death of his wife. *Held,* on demurrer, that the plaintiff had a cause of action. *Owens v. Atlantic Coast Lumber Corp.* (1917, S. C.) 94 S. E. 15.